



05-24-06

Protest

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

To: John Doll, Commissioner for Patents
P.O. Box - 1450
Alexandria, Virginia

5-22-06

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MAY 31 2006

GROUP 3600

PROTEST

I am, Gary C. Johnson pro se patent applicant of; non-provisional application 10/021,656, filed; 12/12/2001 and the provisional patent application 60/254,901 of "parent" invention filed; 12/12/2000.

First of all, as said in the previous communication to your office; "This invention isn't exactly mine." The credit belongs to; the God of Christ. My abilities come (directly) from my faith in him.

This is a general outline of what the examiner Dirk Wright and art unit 3681 has done to prevent my obtaining a patent on my invention. Notice the errors over the past nearly three and half years of examination including the; two Decisions on Petition. I can prove discrimination and also fraud.

You should know that my invention is the ultimate vehicle differential. I saw in your credentials that, your expertise isn't in the field of mechanical engineering but, you would of necessity have to know common patent procedure. I know that the examiners aren't patent attorneys but, they have to possess a degree in their field. My patent examiner; Dirk Wright has an engineering degree and at the time he was assigned to my application, he had eighteen years in the patent office. I also know that he specializes in differentials and transmissions. There is no way he could "not" have known that my differential invention makes all other differentials obsolete. Look at his search strategy file. It contains the numbers of 175 patents/references on prior art which, definitely proves "non-obviousness." See; MPEP - 716.04 "Long Felt need and Failure of Others." Equivalence; none.

My differential invention has all gear driven elements, only allows inversely proportional rotation, is fully self-contained, comparable in height to known differentials, and has Posi-Traction. It eliminates the need for Locking-Differentials, Limited-Slip differentials, and Electronic Traction Control. The Detroit-Locker is a commonly known locking-differential and a Torsen is a commonly known limited-slip differential. Notice that the examiner didn't allow any corrections / amendments at all. Particularly, the Petition Decision(s) of 5/14/04 of; a "Final Action" based on 37 CFR 1.52

The technique that the; examiner used is apparent. He never made a 35 USC 112 "objection" to my faulty description even though, it doesn't contain a "Mode of Operation" then, he used this against my claims. I did submit a statement as required according to; the "Manual for Patent Examination Procedure" (MPEP)-409.03(g)-"Proof of Irreparable Damage." As you know; it is the burden of the examiner to initially point out any formal discrepancies of an application particularly, when it is known that the applicant is without representation whether, the examiner thinks the invention patentable or not. The criticality of having a faulty description is well known to an examiner, see; MPEP-2163.03 -"Typical Circumstances Where Adequate Written Description Issue Arises." No patent attorney in the world; especially under oath, would call my original description; adequate nor would any that I met with take my case. They called it a "conflict of interest." (This is page one).

REQUESTS

I, Gary C. Johnson patent application # 10/021,656 filed; 12/12/2001 request:

- (1) the final action of; 12/06/05 and the Advisory action of; 3/22/06 be revoked, and**
- (2) that my application be given full allowance of my claims; 11 and 12, or 15 and 16, or 17 and 18; either set, all were allowable for the same reasons, and**
- (3) a Notice of Allowance be issued or at least a Notice of Allowability, and**
- (4) all amendments be entered, and**
- (5) that my claims 17 and 18 be recorded in my IFW file, they are not listed.**

I request the above for the following reasons:

- (1) in office action # 4 of; 6/28/05, on page 7 and office action # 5 of; 12/06/05, page 9; the examiner makes a presumption that, my invention may be "Obvious."**

706.02(j) Contents of a 35 U.S.C. 103 Rejection

35 U.S.C. 103 authorizes a rejection where, to meet the claim, it is necessary to modify a single reference or to combine it with one or more other references. After indicating that the rejection is under **35 U.S.C. 103**, the examiner should set forth in the Office action:

- (A) the relevant teachings of the prior art relied upon, preferably with reference to the relevant column or page number(s) and line number(s) where appropriate,**
- (B) the difference or differences in the claim over the applied reference(s),**
- (C) the proposed modification of the applied reference(s) necessary to arrive at the claimed subject matter, and**
- (D) an explanation why one of ordinary skill in the art at the time the invention was made would have been motivated to make the proposed modification.**

The above conditions had not been met by the examiner nor indeed can be because; the examiner drafted a "so called;" allowable claim which encompasses my whole invention thereby; he himself acknowledges patentability of my invention.

§ 1.75 Claim(s).

(2) (e) Where the nature of the case admits, as in the case of an improvement, any independent claim should contain in the following order:

(1) A preamble comprising a general description of all the elements or steps of the claimed combination which are conventional or known,

(2) A phrase such as "wherein the improvement comprises," and

(3) Those elements, steps, and/or relationships which constitute that portion of the claimed combination which the applicant considers as the new or improved portion

Note; if you look at the claim that the examiner drafted in office action # 6 of; 12/06/05, you can plainly see that it does not conform to a combination format for a combination claim. Even an improvement of an invention has to be put into a combination format.

The examiner integrated the elements of the said drafted claim of 12/06/05.

I used the format of a combination claim as required which was neither entered nor recorded. The examiner refused entry of the claims 17 and 18.

2172.01 Unclaimed Essential Matter

[R-1] In addition, a claim which fails to interrelate essential elements of the invention as defined by applicant(s) in the specification may be rejected under **35 U.S.C. 112**, second paragraph, for failure to point out and distinctly claim the invention. See *In re Venezia*, 530 F.2d 956, 189 USPQ 149 (CCPA 1976); *In re Collier*, 397 F.2d 1003, 158 USPQ 266 (CCPA 1968). >But see *Ex parte Nolden*, 149 USPQ 378, 380 (Bd. Pat. App. 1965) ("[I]t is not essential to a patentable combination that there be interdependency between the elements of the claimed device or that all the elements operate concurrently toward the desired result"); *Ex parte Huber*, 148 USPQ 447, 448-49 (Bd. Pat. App. 1965) (A claim does not necessarily fail to comply with **35 U.S.C. 112**, second paragraph where the various elements do not function simultaneously, are not directly functionally related, do not directly intercooperate, and/or serve independent purposes.).<

2164.08(c) Critical Feature Not Claimed

Limiting an applicant to the preferred materials in the absence of limiting prior art would not serve the constitutional purpose of promoting the progress in the useful arts. Therefore, an enablement rejection based on the grounds that a disclosed critical limitation is missing from a claim should be made only when the language of the specification makes it clear that the limitation is critical for the invention to function as intended. Broad language in the disclosure, including the abstract, omitting an allegedly critical feature, tends to rebut the argument of criticality.

2143.03 All Claim Limitations Must Be Taught or Suggested

INDEFINITE LIMITATIONS MUST BE CONSIDERED

A claim limitation which is considered indefinite cannot be disregarded. If a claim is subject to more than one interpretation, at least one of which would render the claim unpatentable over the prior art, the examiner should reject the claim as indefinite under 35 U.S.C. 112, second paragraph (see MPEP § 706.03(d)) and should reject the claim over the prior art based on the interpretation of the claim that renders the prior art applicable. *Ex parte Ionescu*, 222 USPQ 537 (Bd. Pat. App. & Inter. 1984) (Claims on appeal were rejected on indefiniteness grounds only; the rejection was reversed and the case remanded to the examiner for consideration of pertinent prior art.). Compare *In re Wilson*, 424 F.2d 1382, 165 USPQ 494 (CCPA 1970) (if no reasonably definite meaning can be ascribed to certain claim language, the claim is indefinite, not obvious) and *In re Steele*, 305 F.2d 859, 134 USPQ 292 (CCPA 1962) (it is improper to rely on speculative assumptions regarding the meaning of a claim and then base a rejection under 35 U.S.C. 103 on these assumptions).

If you will notice none of the so called indefinite and non-antecedent allegations hold water because they are not pertaining to elements or features nor do they affect any claim limitations. Furthermore a patentable combination is not subject to any limits except for use.

2172 Subject Matter Which Applicants Regard as Their Invention

I. FOCUS FOR EXAMINATION

A rejection based on the failure to satisfy this requirement is appropriate only where applicant has stated, somewhere other than in the application as filed, that the invention is something different from what is defined by the claims. In other words, the invention set forth in the claims must be presumed, in the absence of evidence to the contrary, to be that which applicants regard as their invention. *In re Moore*, 439 F.2d 1232, 169 USPQ 236 (CCPA 1971).

2164.05(b) Specification Must Be Enabling to Persons Skilled in the Art

The relative skill of those in the art refers to the skill of those in the art in relation to the subject matter to which the claimed invention pertains at the time the application was filed. Where different arts are involved in the invention, the specification is enabling if it enables persons skilled in each art to carry out the aspect of the invention applicable to their specialty. *In re Naquin*, 39° F.2d 863, °66, 158 USPQ 317, 319 (CCPA 1968).

When an invention, in its different aspects, involves distinct arts, the specification is enabling if it enables those skilled in each art, to carry out the aspect proper to their specialty. "If two distinct technologies are relevant to an invention, then the disclosure will be adequate if a person of ordinary skill in each of the two technologies could practice the invention from the disclosures."

Only a person skilled in the art (not a mechanic) a student of engineering would understand what inversely proportional rotation is. The examiner should know that a bevel pinion differential only allows inversely proportional when both the drive wheels have equal resistance / traction, and that this actually equates to positive traction of both drive wheels under all road conditions. The examiner also knows that my differential (which was undisputed) is the ultimate differential. It will rotate both drive wheels as if they were on dry pavement, and yet without disturbing normal variability. By the way a person skilled in the art would also know that this inherently equates to anti roll-back and that they would of necessity almost have to be integrated. 35 USC 112 first paragraph requires that disclosure enable that a person be able to make the claimed invention. Differentials are made in factories for automobiles do you think some one could make in their garage. I invented the thing and as mechanically inclined as I am, I would even dare to try. Their are mechanics that don't know how a pinion differential works. By the way since the examiner never made a 112 1st paragraph rejection (3 times). he confirmed that the disclosure was adequate.

608.01(I) Original Claims

In establishing a disclosure, applicant may rely not only on the description and drawing as filed but also on the original claims if their content justifies it.

Where subject matter not shown in the drawing or described in the description is claimed in the application as filed, and such original claim itself constitutes a clear disclosure of this subject matter, then the claim should be treated on its merits, and requirement made to amend the drawing and description to show this subject matter. The claim should not be attacked either by objection or rejection because this subject matter is lacking in the drawing and description. It is the drawing and description that are defective, not the claim.

It is, of course, to be understood that this disclosure in the claim must be sufficiently specific and detailed to support the necessary amendment of the drawing and description.

35 U.S.C. 112 requires the specification to be enabling only to a person "skilled in the art.

The specification need not disclose what is well-known to those skilled in the art and preferably omits that which is well-known to those skilled and already available to the public.

903.02(b) Scope of a Class

Basic Subject Matter Combined with Perfecting Feature. Features may be added to the basic subject matter which do not change the character thereof, but do perfect it for its intended purpose; e.g., an overload release means tends to perfect a stonecrusher by providing means to stop it on overload and thus prevent ruining the machine. However, this perfecting combined feature adds nothing to the basic character of the machine.

I am sending this complaint express mail
on the last day.

Harry C. Johnson
5-22-06